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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,237	08/06/2001	Pierre Rondeau	P 283091 RP-00129-US2	7574

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EXAMINER

KLEBE, GERALD B

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/922,237

Applicant(s)

RONDEAU ET AL.

Examiner

Gerald B. Klebe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-12, 15-24, 26-36 and 39-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-8, 15-20, 26-28, 34-36, 39 and 41 is/are rejected.
- 7) ☒ Claim(s) 9-12, 21-24, 29-33, 40 and 42-47 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

G B Klebe
29 March 04

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendment

1. The amendment filed 01/27/2004 under 37 CFR 1.111 has been entered. By the amendment, independent claims 3, 4, 15, 16, 26, and 39 are amended. Claims 3-12, 15-24, 26-36, and 39-47 are pending in the application, claims 1-2, 13-14, 25, and 37-38 having been canceled previously.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 3-5, 8, 15-17, 20, 39, 41, and 46-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Gagnon et al. (US 6523634 B1).

The applied reference has a common Assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

4. Gagnon et al. discloses (**re: claims 3, 4, 15, 16, and 39**), a fender structure for a vehicle with a plurality of wheels and an all terrain vehicle with a plurality of wheels comprising (refer Figures 2, 6-8, and 11-13): a right fender portion positionable over a right wheel; a left fender portion associated with the right fender portion and positionable over a left wheel (104 and refer

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col 7, lines 29-30), wherein at least one of the right fender and the left fender portion includes a support portion designed as a load-bearing surface defined in part by a top surface of at least one of the left and right fender portions (Figs 2 and 6, taken as the tops of the fenders, as shown); a storage compartment (Fig 13, where the compartment is shown with its covering hatch (182) in raised position, and refer col 9, lines 49-57) formed in the support portion with an opening through which items may be placed into the storage compartment; a cover (Figs 2, 6, and 13; item 182) positionable over and sized to cover the opening; and where the fender structure includes a central support surface (Fig 6, item 182) defined by the cover (182) and a lateral support surface on each side of the central support surface (ref. Figs 2 and 6); and raised support portions in at least one of a lateral, longitudinal, and diagonal direction, integrally formed in at least one to the support portion and the storage compartment (refer to the attached examiner's mark-up of Figs 2, 6, and 12, where the examiner points out and identifies longitudinally oriented raised support portions integrally formed in the top surfaces of the fenders), the raised support portions defining at least one raised support plane (**refer to the attached examiner's mark-up of Figs 2 and 12, where the examiner points out by doubly cross-hatching an exemplary surface of a raised support portion on the vehicle front fender and on the vehicle rear fender that is considered to define at least one raised support plane of the support portion**); and wherein (**re: claim 41**) the fender structure and the built-in raised support portions are formed as a one piece unit (refer Figs 2, 6, and 12 and the examiner's mark-up of these figures, attached hereto); and comprising (**re: claims 5 and 17**) wherein the right fender, the left fender and the support portion are formed in one piece with one another as a single unit (refer Figs 6 and 12); and (**re: claims 8 and 20**) further comprising a mud guard positionable adjacent at least one of the left and right wheels; and a floor board extending away from the mud guard (Fig 7, item 120).

Examiner's Note: Regarding the recitations in claims 3, 4, 15, and 16, that the support portion is designed as a load-bearing surface, it is inherent that the top surfaces of vehicle

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fenders are designed as and are capable of bearing a load, as broadly disclosed and claimed (emphasis added).

5. Claims 4-5, 16-17, 26, 28, and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsutsumikoshi et al. (US 4535869).

Tsutsumikoshi et al. discloses an all terrain vehicle with a plurality of wheels, and a fender structure therefor (Fig 2, items 8 and 9), including a plurality of raised support portions (Fig 2, the raised portions of 8 and 9 that extend above the top surfaces of the fenders themselves) wherein the raised support portions and the fender structure are formed of a plastic material; having a right fender portion positionable over a right wheel; a left fender portion associated with the right fender portion and positionable over a left wheel, wherein at least one of the right fender portion and the left fender portion includes a support portion designed as a load-bearing surface that is defined at least in part by a top surface of at least one of the left and right fender portions (it is inherent that vehicle fender top surfaces are designed as and are capable of supporting loads (as broadly disclosed and claimed)); and raised support portions in at least one of a lateral, longitudinal, and diagonal direction formed in one piece with the support portion, the raised support portions defining at least one raised support plane (**refer to the attached examiner's mark-up of Fig 2, where the examiner points out by doubly cross-hatching an exemplary surface of a raised support portion on the vehicle front fender and on the vehicle rear fender that is considered to define at least one raised support plane of the support portion**); and a main frame (2) from which the wheels (3, 4) are suspended; and a bumper (43) supported by the main frame, wherein the raised support portions are supported by the main frame and are not supported by the bumper; and wherein (**re: claims 5, 17, and 28**) the right fender portion, the left fender portion and the support portion are formed in one piece with one another as a single unit (refer col 5, lines 38-40); and wherein (**re: claim 34**) the fender structure comprises lateral portions and at least one cross-over portion extending transverse to

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the lateral portion, the lateral portions and the at least one cross-over portion defining a support plane (as seen in Fig 2); and wherein (**re: claim 35**) the fender structure is a rear end portion (9) of the all terrain vehicle; and wherein (**re: claim 36**) the fender structure is a front end portion (8) of the all terrain vehicle.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6-7, 18-19, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsutsumikoshi et al. (US 4535869) in view of Tarahomi (US 6299244 B1).

a. As addressed above, Tsutsumikoshi et al. teach an all terrain vehicle including a plurality of wheels, the vehicle and fender structure comprising all of the features of claim 5 from which claims 6 and 7 depend, and of claim 17 from which claims 18 and 19 depend, and of claim 26 from which claim 27 depends.

b. Tsutsumikoshi et al. is silent **regarding the limitations of claims 6 and 17**, wherein the single unit comprising the right and left fender portions and the support portion is formed by one of blow-molding and injection molding.

c. However, Tarahomi teaches the use of blow-molding or injection molding of complex body panels of vehicles.

d. Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have modified the disclosure of Tsutsumikoshi et al. in accordance with the teachings of Tarahomi to disclose that the single unit comprising the fenders and support portions were formable by one of blow-molding and injection molding depending

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upon the need for economy of construction versus the requirement to hold the finished part to tight tolerances, respectively, as suggested by the reference at column 1, lines 41-60.

e. **Regarding the feature of claims 7, 19 and 27**, wherein the plastic material of the structure is one of polyethylene, polypropylene, and fiberglass-charged polyethylene, Tsutsumikoshi et al. is silent regarding the materials used. However, Tahahomi teaches the use of polyethylene and other polyester plastics in the formation of vehicle body panels (refer col 3, lines 54-59). Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have formed the fender and support structure of a material selected from one of polyethylene, polypropylene, and fiberglass-charged polyethylene as a low-cost, strong material as suggested by the reference.

Allowable Subject Matter

8. Claims 9-12, 21-24, 29-33, 40, and 42-47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Argument

9. Applicant's arguments with respect to the claims have been considered but are not persuasive in all respects. Added explanation of the rejections has been provided above and in the attached drawings showing examiner's mark-ups of selected figures taken from the references of Gagnon et al. (-634) and Tsutsumikoshi et al. (-869). Examiner's response in specific areas of disagreement with the Applicant's arguments relative to the structures taught by the prior art of Gagnon (US 6523634 B1) and of Tsutsumikoshi et al. (US 4535869) follows.

Applicant states that the amendments made to claims 3, 4, 15, 16, 26, and 39 have defined the raised support portions such that they define over Gagnon et al. and that the raised

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support portions identified by the Examiner do not “define at least one raised support plane” as now claimed. Applicant further submits that neither Tsutsumikoshi et al. nor Tarahomi describe or suggest this [added] feature in combination with the remaining features recited by the claims.

The examiner disagrees. As shown in the attached Figures 2 and 12 taken from Gagnon et al. and in Figure 2 taken from Tsutsumikoshi et al. the examiner has marked-up by doubly cross-hatching certain surfaces of raised support portions of the front and rear fenders of the prior art vehicles. It is clear that the added limitations of the amended claims **wherein the raised support portions define at least one raised support plane** are limitations met by the references as indicated by the doubly-cross-hatched surfaces marked by the examiner.

Action made Final

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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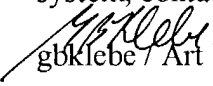
Conclusion


11. Any inquiry concerning this or earlier communication(s) from the examiner should be directed to Gerald B. Klebe at 703-305-0578, fax 703-872-9306; Mon.-Fri., 8:00 AM - 4:30 PM ET, or to Supervisory Patent Examiner Brian L. Johnson, Art Unit 3618, at 703-308-0885.

Note that the examiner's fax number has changed.

Official correspondence should be sent to the following TC 3600 Official Rightfax numbers as follows: Regular correspondence: 703-872-9326; After Finals: 703-872-9327; Customer Service: 703-872-9325.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 gbklebe / Art Unit 3618 / 29 March 2004


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4/2/04